

Message Text

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ORIGIN AGRE-00

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TO AMEMBASSY BERN PRIORITY

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E.O. 11652: N/A

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SUBJECT: SWISS CHEESE QUOTA - COUNTRY TRANSFERS

REFS: (A) BERN 3578, (B) STATE 182460, (C) BERN 3453

1. IN REPLY TO SWISS DEMARCHE (REF. A) EMBASSY SHOULD
REPLY, DRAWING ON THE FOLLOWING:

A. U.S. LAW REQUIRES THE IMPOSITION OF COUNTERVAILING
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DUTY (CVD) WHENEVER IT IS DETERMINED THAT BOUNTIES OR
GRANTS HAVE BEEN PAID, DIRECTLY OR INDIRECTLY, ON ANY
IMPORTED MERCHANDISE. THE WAIVER WAS GRANTED AS PER JULY 1,
1975 MACDONALD LETTER, WITH AGREEMENT INTER ALIA THAT SWIT-
ZERLAND WOULD NOT EXPORT "LOW QUALITY SUBSIDIZED (REPEAT
SUBSIDIZED) GRINDER CHEESE TO THE U.S." WITHOUT THE
WAIVER IT IS QUESTIONABLE WHETHER SWISS SALES IN THE U.S.

COULD HAVE GROWN AS RAPIDLY AS THEY HAVE. IN THIS SENSE THE AGREEMENT WAS INDEED A CONCESSION TO THE SWISS.

B. THE TREASURY DEPARTMENT DOES NOT ACCEPT AMBASSADOR JACOBI'S INTERPRETATION (PARA. 2A OF REF A) THAT THE CVD WAIVER WAS GRANTED BECAUSE OF THE NATURE AND PURPOSE OF THE SWISS SUBSIDY PROGRAM. THE COMPARATIVELY HIGH PRICE OF SWISS EMMENTHALER IN THE US MARKET, COMBINED WITH

A PRE-AGREEMENT HISTORY OF DECLINING SALES FORMED THE BASIS FOR THE WAIVER BEING GRANTED ON NON QUOTA CHEESE WITHOUT A REQUIREMENT FOR SUBSIDY ADJUSTMENTS. FOR ALL OTHER COUNTRIES ADJUSTMENTS WERE IMPOSED AS A CONDITION FOR THE GRANTING OF A CVD WAIVER. JACOBI SHOULD BE REMINDED THAT THE TREASURY DEPARTMENT REQUIRED THE EC AND OTHER EMMENTHALER SUPPLIERS TO TOTALLY REMOVE THEIR SUBSIDIES ON EMMENTHALER AS A CONDITION OF THE GRANTING OF THE WAIVER. THIS MEANS THE TRANSFER OF A LICENSE TO ANY OF THESE COUNTRIES FOR "GRINDER CHEESE" WOULD REQUIRE THAT SUCH CHEESE BE EXPORTED WITHOUT SUBSIDY.

FYI: THIS MESSAGE HAS BEEN CLEARED WITH A TREASURY PARTICIPANT IN THE DISCUSSION LEADING TO THE INITIAL AGREEMENT. END FYI.

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C. USDA HAS NEVER ACCEPTED SWISS VIEW (PARA. 4 REF A) THAT THIS IS A SPECIAL CASE. TRANSFERS OF SWISS EMMENTHALER WERE NOT GRANTED IN 1975 AND 1976 BECAUSE: (A) IT WAS DEEMED INCONSISTENT TO TRANSFER THE QUOTA FROM SWITZERLAND, WHICH HAD AGREED NOT TO SHIP SUBSIDIZED GRINDER CHEESE, WHEN MOST, IF NOT ALL, TRANSFERRED LICENSES WOULD NATURALLY GO TO A COUNTRY PERMITTED TO SHIP SUBSIDIZED CHEESE UNDER THE TREASURY GRANTED CVD WAIVER PROVIDING FOR THE GRADUAL OTHER THAN IMMEDIATE ELIMINATION OF THEIR SUBSIDY (THE ELIMINATION OF SUBSIDIES AS AGREED UNDER WAIVERS HAS NOW BEEN COMPLETED BY ALL COUNTRIES INVOLVED PERMITTING TRANSFERS TO ALL ELIGIBLE SUPPLYING COUNTRIES) AND (B) USDA ATTORNEYS HAD NOT YET RENDERED AN OPINION ON WHETHER OR NOT TRANSFERS WERE MANDATORY. THE CVD WAIVER WAS AGREED TO BY TREASURY UNDER PROVISIONS OF THE TRADE ACT OF 1974 THE QUOTA TRANSFER IS REQUIRED BY OTHER SECTIONS OF THE US CODE (7 CFR 6.20-2.33) WHICH ARE NEITHER INCONSISTENT WITH NOR OVERRIDDEN BY THE TRADE ACT.

D. CURRENT USDA REGULATIONS ON IMPORTS OF CHEESE REMAIN AS THEY WERE PRIOR TO 1975 COUNTERVAILING DUTY INVESTI-

GATION. THERE IS OFFICIALLY NO LEGAL LIMIT ON THE AMOUNT OR VALUE OF EMMENTHALER CHEESE WHICH MAY BE IMPORTED IF IT IS PRICED ABOVE THE PRICE BREAK. CONSEQUENTLY, THE MARKET FOR SWITZERLAND HAS GROWN CONSIDERABLY HERE AS INDICATED IN PARA. 5 REF B. EVEN IF THE QUOTA IN QUESTION WERE FULLY USED BY SWITZERLAND IT WOULD BE EQUAL TO LESS THAN 2 PERCENT OF HER TOTAL CHEESE EXPORTS TO US LAST YEAR.

E. IT IS NOT A CASE OF THE SWISS "GIVING UP THEIR QUOTA". TRANSFERS ARE MADE FOR THE REMAINDER OF QUOTA YEAR ONLY. BEGINNING WITH THE 1978 QUOTA YEAR (JANUARY 1) COUNTRY ALLOCATIONS WILL BE MADE AGAIN AS USUAL. ANY CHANGE IN COUNTRY ALLOCATIONS ON A PERMANENT LIMITED OFFICIAL USE

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BASIS WOULD REQUIRE A PRESIDENTIAL PROCLAMATION. NO SUCH CHANGE IS CURRENTLY CONTEMPLATED. IN THE UNLIKELY EVENT THAT NEW COUNTRY ALLOCATIONS BASED ON NEW BASE PERIODS WERE TO BE CALCULATED, DATA USED FOR SUCH BASE PERIODS WOULD NOT BE LIMITED TO IMPORTS OF QUOTA CHEESE ONLY, RATHER WOULD BE CALCULATED WITH RESPECT TO PROPORTIONS SUPPLIED, NOT QUOTAS HELD, IN ACCORDANCE WITH GATT ARTICLE XIII 2(D). HENCE, SWITZERLAND'S MAINTENANCE OF A DORMANT QUOTA WOULD HAVE NO BEARING ON THE SIZE OF ANY NEW QUOTA ALLOCATIONS (IF SUCH WERE EVER CALCULATED).

2. AS PER REF. B, USDA STILL PLANS TO GRANT TRANSFERS BEGINNING FROM THE END OF AUGUST.

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